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EXAMINER
SWEARINGEN, JEFFREY R

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
> - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
> - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
> Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 December 2011</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) <u>1-36 and 38-45</u> is/are pending in the application.

   5a) Of the above claim(s) <u>38-45</u> is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) <u>1-36</u> is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

     1.☐ Certified copies of the priority documents have been received.

     2.☐ Certified copies of the priority documents have been received in Application No. _____.

     3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.　　As indicated in the prior office action, the Examiner is willing to discuss allowable subject matter prior to Applicant's next response.

Response to Arguments

2.　　Applicant's arguments filed 12/2/2011 have been fully considered but they are not persuasive.

3.　　Applicant argued that Kenner failed to disclose a performance metric. Applicant argued that Kenner's SM parameter does not meet Applicant's performance metric. Applicant is directed to Applicant's specification.

4.　　"Based on the performance metric, the client may select among the content sources to identify a primary content source...to be accessed by the client." Specification, page 3, lines 18-21.

5.　　"Specifically, the client...identifies a performance metric for at least one of the content sources. The performance metric then is used to select one of the content sources." Specification, page 4, lines 13-15.

6.　　"As a result of receiving the responses, the client...identifies a performance metric...which may include identifying the first content source to respond, identifying the content source with the highest throughput rate, and/or identifying the content source operating at the lowest utilization." Specification, page 9, lines 12-15.

7.　　Kenner's SM parameter has data which "specifies the particular content provider from which the desired clip originated, as well as the group of mirror servers that particular content provider uses." Kenner, col. 14, lines 43-47.

8.   "If more than one set of delivery sites exists for different content providers, the
'SM' parameter is further used by the player program to determine which Smart Mirror
site in the configuration file is to be used in the constructed URL." Kenner, col. 15, lines
13-17.

9.   Applicant identifies a performance metric for at least one of the content sources,
which is then used to select one of the content sources. Kenner's SM parameter is
identified for the particular content provider from which the desired clip originated (at
least one of the content sources) and then is used to determine which mirror site to use
(to select one of the content sources).

10.   Based on this analysis, Kenner's SM parameter meets Applicant's performance
metric requirements based upon Applicant's own specification.

11.   Applicant argues that Kenner failed to disclose the SM parameter is determined
"based on requesting the identical portions of the content." The SM parameter is
determined upon requesting content. "The player program first analyzes the EMBED
tag to determine if there is an 'SM' (Smart Mirror) parameter (step 60); the presence of
such a parameter indicates that the embedded clip is enabled for Smart Mirroring."
Kenner, col. 14, lines 40-43. By accessing the webpage with the content, Kenner is
requesting the identical portions of the content. When Kenner requests the identical
portions of the content, Kenner determines the presence of the SM parameter or the
performance metric.

12.   Applicant argues that Kenner failed to disclose "rendering...the identical portion
of the accessed content and a subsequent portion of content that follows the identical

portion of the accessed content from the selected content source." Kenner disclosed

playback of content. "[T]he Smart Mirror system is used to locate a delivery site from

which to download a video or audio clip...referenced on a Web page." Kenner, col. 14,

lines 16-19. The subsequent portion of the content is finishing the playback of the file,

and the identical portion is the beginning of the file. Rendering is equivalent to

playback. Applicant's specification indicates that the invention is designed for the

playback of "video streams". Specification, page 3, lines 23-26. In this context, it is

unclear how Applicant argues that rendering does not equal playback, especially since

Applicant failed to define "rendering" within the specification as originally filed.

Claim Rejections - 35 USC § 102

13.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in
> public use or on sale in this country, more than one year prior to the date of application for patent in
> the United States.

14.   Claims 1-8, 10-16, 18-26, 28-34, and 36 are rejected under 35 U.S.C. 102(b) as

being anticipated by Kenner et al. (US 6,003,030).

15.   In regard to claim 1, Kenner disclosed a method of enabling a client to access

content, the method comprising:

receiving, on a client, an instruction from a client application indicating a client

request to access content; (client application is player program, col. 14, line 19; client

request is request for video data; content is video data, col. 14, line 22)

accessing, by the client application and on the client, a list of content sources capable of rendering the content for which access is requested by the client; (list of content sources is list of available delivery sites, col. 8, line 25)

requesting, using the client application on the client, identical portions of the content from each of the content sources in the list of the content sources; (col. 15, lines 4-24, identical portions of the content is referenced clip, col. 14, line 62)

determining, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources; (performance metric is SM parameter, col. 15, line 9)

comparing the performance metrics for the content sources; (col. 15, lines 14-17)

selecting, using the client application on the client, among the content sources based on the comparison of the performance metrics for the content sources to identify a content source to be accessed by the client; and (col. 15, lines 10-17)

rendering, using the client application on the client, the identical portion of the accessed content and a subsequent portion of content that follows the identical portion of the accessed content from the selected content source. (col. 15, lines 39-46. "rendering" is col. 14, line 22 - playback of video data. Accessed content is beginning of file, subsequent portion of content is remainder of file)

16.   In regard to claim 2, Kenner disclosed the method of claim 1 further comprising accessing the content source selected. (col. 15, lines 10-24)

17.   In regard to claim 3, Kenner disclosed the method of claim 1 further comprising monitoring communications exchanged with the content source selected to determine a selected connection state to determine if an alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

18.   In regard to claim 4, Kenner disclosed the method of claim 3 further comprising repeating the determining and selecting when the selected connection state indicates that the alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

19.   In regard to claim 5, Kenner disclosed the method of claim 3 further comprising monitoring the state of at least one of the content sources not selected from within the list of content sources so that the alternate content source may be selected when the connection state indicates the alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

20.   In regard to claim 6, Kenner disclosed the method of claim 1 wherein receiving the list of content sources includes receiving the list of content sources from a host. (host is MSP 32, col. 8, lines 18-20)

21.   In regard to claim 7, Kenner disclosed the method of claim 6 wherein the list of content sources is received in response to authenticating. (col. 9, lines 36-45)

22.   In regard to claim 8, Kenner disclosed the method of claim 1 wherein determining the performance metric includes polling at least two of the content sources with a polling request. (col. 9, lines 56-65)

23.   In regard to claim 10, Kenner disclosed the method of claim 8 wherein determining the performance metric includes identifying a first content source with a response to the polling request that is received before other responses from other content sources included in the list of content sources. (col. 12, lines 26-50)

24.   In regard to claim 11, Kenner disclosed the method of claim 1 wherein determining the performance metric includes identifying a first content source able to sustain an identified throughput rate. (col. 12, lines 38-43)

25.   In regard to claim 12, Kenner disclosed the method of claim 11 wherein identifying the first content source able to sustain the identified throughput rate includes identifying the first content source able to sustain the identified throughput rate for a specified duration. (col. 12, lines 38-43)

26.   In regard to claim 13, Kenner disclosed the method of claim 1 wherein determining the performance metric includes identifying the content source with a highest throughput rate. (col. 12, lines 38-43)

27.   In regard to claim 14, Kenner disclosed the method of claim 1 wherein determining the performance metric includes ranking at least two of the content sources. (col. 12, lines 38-43)

28.   In regard to claim 15, Kenner disclosed the method of claim 14 further comprising using the ranking to select a backup content source to be accessed when

the content source selected for access experiences an interrupt condition. (col. 15,

lines 18-24, interrupt condition is file unable to be accessed)

29.   In regard to claim 16, Kenner disclosed the method of claim 14 further

comprising maintaining a relative ranking among at least two of the content sources not

selected by transmitting subsequent polling requests to the content sources not

selected. (col. 13, lines 15-19)

30.   In regard to claim 18, Kenner disclosed the method of claim 14 further

comprising switching to one of the content sources not selected from the list when

access to the content source selected is determined to be inferior to access available

using the content source that is accessed. (col. 15, lines 18-24)

31.   In regard to claim 19, Kenner disclosed a content access system comprising:

        a client with a processor that comprises:

                a content access code segment structured and arranged to receive an

        instruction from a client application indicating a client request to access content;

        (client application is player program, col. 14, line 19; client request is request for

        video data; content is video data, col. 14, line 22)

                a source selection code segment structured and arranged to:

                        access, by the client application, a list of content sources capable

                of rendering the content for which access is requested by the client, and

                (list of content sources is list of available delivery sites, col. 8, line 25)

                        request, using the client application on the client, identical portions

                of the content from each of the content sources in the list of content

sources; (col. 15, lines 4-24, identical portions of the content is referenced

clip, col. 14, line 62)

a communications interface structured and arranged to determine, using

the client application on the client and based on requesting the identical portions

of the content, a performance metric describing an ability for the content source

to support the client as measured by the client between each of the at least two

of the content sources; and (performance metric is SM parameter, col. 15, line 9)

a selection code segment structured and arranged to:

compare the performance metrics for the content sources; (col. 15,

lines 14-17)

select, using the client application on the client, among the content

sources based on the comparison of the performance metrics for the

content sources to identify a content source to be accessed by the client;

and (col. 15, lines 10-17)

a rendering code segment structured and arranged to render, using the

client application on the client, the identical portion of the accessed content and a

subsequent portion of content that follows the identical portion of the accessed

content from the selected content source. (col. 15, lines 39-46. "rendering" is col.

14, line 22 - playback of video data. Accessed content is beginning of file,

subsequent portion of content is remainder of file)

32.   In regard to claim 20, Kenner disclosed the content access system of claim 19 further comprising a retrieval code segment structured and arranged to access the content source selected. (col. 15, lines 10-24)

33.   In regard to claim 21, Kenner disclosed the content access system of claim 19 further comprising a first monitoring code segment structured and arranged to monitor communications exchanged with the content source selected to determine a selected connection state to determine if an alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

34.   In regard to claim 22, Kenner disclosed the content access system of claim 19 further comprising a repeating code segment structured and arranged to repeat determining and selecting operations when the selected connection state indicates that the alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

35.   In regard to claim 23, Kenner disclosed the content access system of claim 19 further comprising a second monitoring code segment structured and arranged to monitor the state of at least one of the content sources not selected from within the list of content sources so that the alternate content source may be selected when the connection state indicates the alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

36.   In regard to claim 24, Kenner disclosed the content access system of claim 19 wherein the source selection code segment is structured and arranged to receive the list of content sources from a host. (host is MSP 32, col. 8, lines 18-20)

37.   In regard to claim 25, Kenner disclosed the content access system of claim 24 wherein the source selection code segment is structured and arranged to receive the list of content sources in response to authenticating. (col. 9, lines 36-45)

38.   In regard to claim 26, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to transmit a polling request to at least two of the content sources in the list of content sources. (col. 9, lines 56-65)

39.   In regard to claim 28, Kenner disclosed the content access system of claim 26 wherein the communications interface is structured and arranged to identify a first content source with a response to the polling request that is received before other responses from other content sources included in the list of content sources. (col. 12, lines 26-50)

40.   In regard to claim 29, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to identify a first content source able to sustain an identified throughput rate. (col. 12, lines 38-43)

41.   In regard to claim 30, Kenner disclosed the content access system of claim 29 wherein the communications interface is structured and arranged to identify the first content source able to sustain the identified throughput rate for a specified duration. (col. 12, lines 38-43)

42.   In regard to claim 31, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to identify the content source with a highest throughput rate. (col. 12, lines 38-43)

43.   In regard to claim 32, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to rank at least two of the content sources. (col. 12, lines 38-43)

44.   In regard to claim 33, Kenner disclosed the content access system of claim 32 wherein the communications interface is structured and arranged to use the ranking to select a backup content source to be accessed when the content source selected for access experiences an interrupt condition. (col. 15, lines 18-24, interrupt condition is file unable to be accessed)

45.   In regard to claim 34, Kenner disclosed the content access system of claim 32 wherein the communications interface is structured and arranged to maintaining a relative ranking among at least two of the content sources not selected by transmitting subsequent polling requests to the content sources not selected. (col. 13, lines 15-19)

46.   In regard to claim 36, Kenner disclosed the content access system of claim 32 wherein the communications interface is structured and arranged to switch to one of the content sources not selected from the list when access to the content source selected is determined to be inferior to access available using the content source that is accessed. (col. 15, lines 18-24)

Claim Rejections - 35 USC § 103

47.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

48.   Claims 9 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Kenner in view of Lumelsky et al. (US 6,377,996).

49.   In regard to claim 9, Kenner disclosed the method of claim 8. Kenner disclosed

polling multiple content sources. Kenner failed to disclose transmission of a stream

request. Kenner was a video on demand system in col. 14, lines 15-21.

50.   However, Lumelsky disclosed a stream can be requested by a client. Lumelsky,

col. 5, lines 29-31. Lumelsky performed this on a video on demand server.

51.   It would have been obvious to one of ordinary skill in the art at the time of

invention that since video on demand servers provided video streams, and Kenner

requested a video clip, the video clip in Kenner could be streamed as in Lumelsky in

order to start playback before receiving the entire clip as in Kenner.

52.   In regard to claim 27, Kenner disclosed the content access system of claim 26

Kenner disclosed polling multiple content sources. Kenner failed to disclose

transmission of a stream request. Kenner was a video on demand system in col. 14,

lines 15-21.

53.   However, Lumelsky disclosed a stream can be requested by a client. Lumelsky, col. 5, lines 29-31. Lumelsky performed this on a video on demand server.

54.   It would have been obvious to one of ordinary skill in the art at the time of invention that since video on demand servers provided video streams, and Kenner requested a video clip, the video clip in Kenner could be streamed as in Lumelsky in order to start playback before receiving the entire clip as in Kenner.

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55.   Claims 17 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner in view of Mandato (US 7,076,552)

56.   In regard to claim 17, Kenner disclosed the method of claim 14. Kenner disclosed contacting multiple content sources, but failed to disclose maintaining multiple connections simultaneously.

57.   However, Mandato disclosed multimedia services can be maintained with the use of multiple connections. See Mandato, col. 3, lines 48-53.

58.   It would have been obvious to one of ordinary skill in the art at the time of invention to establish multiple connections in the Kenner system to allow for redundancy in case a server in Kenner failed to be connected, allowing for switching to a backup server instantaneously. See Kenner, col. 13, lines 15-19.

59.   In regard to claim 35, Kenner disclosed the content access system of claim 32. Kenner disclosed contacting multiple content sources, but failed to disclose maintaining multiple connections simultaneously.

60.   However, Mandato disclosed multimedia services can be maintained with the use
of multiple connections. See Mandato, col. 3, lines 48-53.

61.   It would have been obvious to one of ordinary skill in the art at the time of
invention to establish multiple connections in the Kenner system to allow for redundancy
in case a server in Kenner failed to be connected, allowing for switching to a backup
server instantaneously. See Kenner, col. 13, lines 15-19.

Allowable Subject Matter

62.   Applicant may wish to contact the Examiner prior to filing a response in order to
discuss possibilities to place the application in condition for allowance.

Conclusion

63.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time
policy as set forth in 37 CFR 1.136(a).

       A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within
TWO MONTHS of the mailing date of this final action and the advisory action is not
mailed until after the end of the THREE-MONTH shortened statutory period, then the
shortened statutory period will expire on the date the advisory action is mailed, and any
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
the advisory action. In no event, however, will the statutory period for reply expire later
than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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